

REMARKS

Claims 1-6, 8-13, and 16-34 are pending. Claims 4, 7, 14, and 15 have been cancelled.

Claims 1, 17, and 32 have been amended. Claims 33 and 34 are newly presented. No new matter has been added. The Information Disclosure Statement filed on October 8, 2008 is being resubmitted with a clean copy of the cited reference.

Claims 1-31 were objected to. Based on the amendment filed October 8, 2008 and the Advisory Action mailed November 14, 2008, Applicants believe that all claim objections to pending claims have been overcome.

Rejection under 35 U.S.C. §102(e)

Claim 1

Claims 1-32 were rejected. Claims 1-32 were rejected under 35 U.S.C. § 102(e) as being anticipated by Kapatoes et al. (U.S. Patent No. 6,661,870).

Claim 1 recites “automatically monitoring one or more factors external to said area of interest that could affect the effectiveness of said initial prescription.”

Kapatoes discloses fluence adjustment for improving delivery to voxels without reoptimization. Specifically, Kapatoes compensates for unexpected changes in the size, shape, and/or position of a patient in the delivery of radiation therapy. First and second images are compared to determine if any combination of the size, shape, or position of the tumor or sensitive structures has changed. See abstract.

In Kapatoes, the site of the tumor or sensitive structures is the area of interest. Detecting

changes in the size, shape, or position of the area of interest is not one or more factors external to said area of interest. There is no indication in Kapatoes of monitoring any other site. Therefore, Kapatoes does not teach or suggest automatically monitoring one or more factors external to said area of interest that could affect the effectiveness of said initial prescription.

For these reasons, Applicants respectfully request that the rejection of claim 1 be withdrawn. Additionally, the rejections of claims 1-6, 8-13, 16 and 33 should be withdrawn because those claims depend from claim 1.

Claim 17

Claim 17 recites “said automatic monitoring of one or more factors is performed external to said area of interest.” For the reasons addressed above with respect to claim 1, Kapatoes fails to teach or suggest that the automatic monitoring is performed external to said area of interest.

For these reasons, Applicants respectfully request that the rejection of claim 17 be withdrawn. Additionally, the rejection of claims 18-32 and 34 should be withdrawn because those claims depend from claim 17.

Claim 5

Claim 5 recites that “said one or more factors comprise a stage of disease within said area of interest.” Kapatoes does not teach or suggest this feature nor does the Office Action address this claim. Applicants respectfully request that the rejection of claim 5 be withdrawn.

Claim 6

Claim 6 recites that “said one or more factors comprises a stage of treatment of said area

of interest.” Kapatoes does not teach or suggest this feature nor does the Office Action address this claim. Applicants respectfully request that the rejection of claim 6 be withdrawn.

Claim 32

Claim 32 recites that “said one or more factors are selected from the group consisting of: 1) a stage of disease within said area of interest; 2) a stage of treatment of said area of interest and 3) changes in applying said first and second doses of therapeutic radiation due to unscheduled breaks in said method of active therapy redefinition.” Kapatoes does not teach or suggest any of these features.

The Office Action asserts that “the updating of the plan can include modifications between dosing due to unexpected changes in the tumor site thereby inducing an unscheduled break into the therapy session” (Office Action, page 4, lines 1-3). Even if this were true, Kapatoes would not teach the features of claim 32. Further, Applicants do not find the teaching asserted by the Office Action in Kapatoes.

For these reasons, Applicants respectfully request that the rejection of claim 32 be withdrawn.

Claims 33 and 34

Claims 33 and 34 recite “wherein the first therapeutic application occurs during a first session of a treatment plan and the second therapeutic application occurs during a subsequent session of the treatment plan.”

Kapatoes discloses that changes to the area of interest may be investigated either “when

therapy is to begin" but before it has begun (col. 5, lines 58-59). Another embodiment discloses that "fluence adjustment is computed during the application of the prescribed radiation" (col. 7, lines 21-22) but from an image taken "simultaneously with or after the application of the prescribed radiation" and performs the adjustment "while the patient is still in position" (col. 7, lines 7-19).

In one scenario, Kapatoes investigates changes to the area of interest before any radiation therapy has begun. In the other, Kapatoes investigates changes to the area during a single radiation therapy session.

Therefore, Kapatoes does not teach or suggest that the first therapeutic application occurs during a first session of a treatment plan and the second therapeutic application occurs during a subsequent session of the treatment plan.

For these reasons, it is respectfully submitted that Kapatoes does not anticipate claims 33 and 34.

CONCLUSION:

Applicants respectfully submit that all of the pending claims are in condition for allowance and seeks early allowance thereof.

PLEASE MAIL CORRESPONDENCE TO: Respectfully submitted,

Siemens Corporation
Customer No. 28524
Attn: Elsa Keller, Legal Administrator
170 Wood Avenue South
Iselin, NJ 08830
Rosa S. Kim, Reg. No. 39,728
Attorney(s) for Applicant(s)
Telephone: 650-694-5330
Date: 12-8-08